

NO. C-1-CV-16-010906

ROBERT REEVES

Plaintiff,

and

CITY OF AUSTIN

Intervenor,

v.

BRET VANCE

Defendant.

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IN THE COUNTY COURT OF LAW

NO. 1

TRAVIS COUNTY, TEXAS

CITY OF AUSTIN'S PLEA IN INTERVENTION

The City of Austin intervenes in the above captioned suit under Rule 60 of the Texas Rules of Civil Procedure to seek enforcement of its ordinances and joins in Plaintiff's request for temporary and permanent injunction preventing Defendant from continuing to violate City of Austin ordinances by advertising, promoting, renting, or otherwise operating his property located at 903 Edgecliff Terrace, Austin, Texas 78704 (the "Property") as an unlicensed short-term rental ("STR").

Intervention in this suit is essential to protect the City's interest in that Defendant continually and repeatedly violates City of Austin laws by operating the Property as an unlicensed STR despite multiple notices of violation and repeated administrative hearings and fines for same.

I. Ordinances violated

1. The City regulates STRs in Austin City Code Title 25 (*Land Development Code*). The City's regulations address licensing and occupancy limits. See Austin City Code Sections 25-2-

788 through 25-2-795. In order to lawfully operate a STR, a property must obtain a license from the Austin Code Department (ACD) provided such property is both eligible for the type of license applied for and is in an area zoned for the type of license sought.

2. Section 25-2-788 of the City's Land Development Code provides rules for owner-occupied STRs, and 25-2-789 provides rules for non-owner occupied STRs. Both sections along with § 25-2-794 prohibit STRs from operating without a license. Austin City Code §§ 25-2-788(B)(2), 25-2-789(B)(2), 25-2-794(H). Unlicensed STRs are also prohibited from advertising. Austin City Code § 25-2-794 (E).

II. Factual Background

3. The City has received complaints about the Property being operated as an unlicensed STR as far back as September 2013. See EXH. 1, p.1. ACD verified the complaints after numerous in-person inspections and issued a Notice of Violation to Defendant in April 2014. See EXH. 1, p.4.

4. After the initial Notice of Violation, the City continued to receive complaints about the Property increasing in number each year before reaching a peak of 30 in 2017. From 2013 – 2018 the City's code enforcement officers inspected the Property more than 50 times and issued more than 20 citations. See EXH. 1. There were at least 7 citations issued in 2018 and upon information and belief, as of March of this year the Property was still being advertised as an STR on Airbnb.com indicating that it is still operating as an unlicensed STR.

5. On January 31 and February 22, 2019 administrative hearings were held on five citations issued in late 2018 and the Defendant was found liable for violating the City's STR regulations. See EXH. 2 In total, Defendant has been fined a total of \$5,490 in administrative hearing fines. Although the City's code enforcement officers continue to follow up on all complaints and issue administrative citations when appropriate, Defendant has continued to operate the Property as an

unlicensed STR and enforcement efforts have been unsuccessful in obtaining Defendant's compliance with City ordinances.

III. Standard for Intervention, Jurisdiction, and Venue

6. Texas Rule of Civil Procedure 60 provides that “[a]ny party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” Tex. R. Civ. P. 60. In order to intervene, a party must have sufficient interest. *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982). “A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation.” *Jabri v. Alsayyed*, 145 S.W.3d 660, 672 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Law Offices of Windle Turley v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex. App.—Fort Worth 2003, no pet.)). An intervenor is not required to secure a court’s permission to intervene in a cause of action, or prove that it has standing. See *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990).

7. There is no pre-judgment deadline for intervention. *Tex. Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31, 36 (Tex. 2008) (citing Tex. R. Civ. P. 60; *Citizens State Bank of Sealy, Tex. v. Caney Invs.*, 746 S.W.2d 477, 478 (Tex. 1988)). Texas courts recognize an “expansive” intervention doctrine in which a plea in intervention may be untimely only if it is “filed after judgment,” *Texas v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015) (quoting *First Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984)). There has been no final judgment in this case, therefore the City’s intervention is timely.

8. Jurisdiction and venue for a suit brought by the City to enforce one of its municipal ordinances is proper in either the District Court or the County Court at Law of the County where (the City) is located. Tex. Loc. Gov’t Code Ann. § 54.013.

IV. Authority for Cause(s) of Action

9. The City of Austin may regulate the use of residential property within city limits using its zoning authority. Tex. Loc. Gov't Code Ann. §§ 211.001, 211.003; *see Wasson Interests, Ltd. v. City of Jacksonville*, 512 S.W.3d 217, 221 (Tex.App.—Tyler 2016, pet. denied) (“The enforcement of zoning ordinances and land-use restrictions is a valid exercise of a city’s police powers”). The City exercises its zoning authority to promote “public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.” Tex. Loc. Gov't Code Ann. §§ 211.001. These regulations fulfill the City’s legitimate governmental purpose. *See Sheffield Development Co., Inc. v. City of Glenn Heights*, 140 S.W.3d 660, 672, 675-76 (Tex. 2004). Because the City’s regulations promote these legitimate interests, the City’s short-term rental regulations fit squarely within the City’s authority.

10. Enforcement of municipal ordinances is addressed by Tex. Loc. Gov't Code Ann. §§ 54.001-.044. A municipality may bring a civil action for enforcement of an ordinance “for zoning that provides for the use of land.” Tex. Loc. Gov't Code Ann. § 54.012 (3). Injunctive relief is available when there is “substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant.” Tex. Loc. Gov't Code Ann. § 54.016.

11. Chapter 211 “Regulation of Land Use, Structures, Businesses, and Related Activities – Municipal Regulatory Authority – Municipal Zoning Authority – General Zoning Regulations,” provides that a governing body of a municipality may regulate “the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes.” Tex. Loc. Gov't Code Ann. § 211.003 (5). Further, the municipal authority “may institute appropriate action to: (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; (2) restrain, correct, or abate the violation; (3) prevent the occupancy of the

building, structure, or land; or (4) *prevent any illegal act, conduct, business, or use on or about the premises.*” See Tex. Loc. Gov’t Code Ann. § 211.012 (c). (Emphasis added).

12. In accordance with the above authorities of Tex. Loc. Gov’t Code Ann. § 54.016 and Tex. Loc. Gov’t Code Ann. § 211.012 (c), in order to prevent the “illegal act, conduct, business, and use” of the Property as an unlicensed STR, the City intervenes and under the above discussed authorities asserts the following cause of action.

V. Application for Permanent Injunction

13. The City requests this court issue a permanent injunction ordering Defendant to discontinue the use of the Property as an unlicensed STR and enjoin Defendant from continuing to advertise the Property as an STR unless and until he obtains a valid City of Austin STR license. The City reserves its right to plead further and add causes for any and all other relief to which it may be justly entitled.

14. Generally, an applicant for permanent injunction must show it has a probable right to the relief it seeks on final hearing. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Thus, the applicant must prove it is likely to succeed on the merits of its lawsuit. *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 686 (Tex.1990). Herein, under the above authorities, the City has a right to the relief it seeks and upon a showing the Plaintiff is in violation of City ordinances, the City is entitled to the relief sought.

15. An applicant for injunction also must generally plead that it will suffer a probable injury. *Butnaru*, 84 S.W.3d at 204. Probable injury is made up of three elements.: 1) the harm is imminent; 2) the injury would be irreparable; and 3) the applicant has no other adequate remedy at law. *Henry v. Cox*, 483 S.W.3d 119, 137 (Tex.App.—Houston [1st Dist] 2015), *rev’d on other grounds*, 520 S.W.3d 28 (Tex.2017). However, Texas case law is clear that when requesting an injunction to enjoin the further violation of its ordinances, a City is not required to show there is no other

adequate penalty at law, nor is the City required to show that an injury has already occurred to it or its citizens. See *Swinney v. City of San Antonio*, 483 S.W.2d 556, 559 (Tex.Civ.App.—San Antonio 1971, no writ). Proof of a violation of the ordinance alone establishes a sufficient case for injunctive relief. See *City of Fort Worth v. Johnson*, 388 S.W.2d 400, 402 (Tex.1964); *San Miguel v. City of Windcrest*, 40 S.W.3d 104, 108 (Tex. App.—San Antonio 2000, no pet.). In regards to the final requirement, that the harm is imminent, as stated above, the Plaintiff is continuing to violate City ordinances and there is no indication that he will stop without intervention of the Court. Because all elements are met, the City therefore requests injunctive relief.

VI. Prayer for Relief

The City requests to intervene in this suit to protect its interest in ensuring City ordinances are followed and unlawful conduct is not left unchecked. The City further requests the Court allow this intervention and thereafter permanently enjoin Defendant from violating the City Code by operating or advertising the Property as an STR until he has obtained the appropriate license. The City prays for all other and further relief that this Court may deem proper in law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF, LITIGATION

/s/ David W. May
DAVID W. MAY
Assistant City Attorney
State Bar No. 24092778
david.may@austintexas.gov
City of Austin - Law Department
P. O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2342
Facsimile: (512) 974-1311

ATTORNEYS FOR INTERVENOR

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this the 11th day of April 2019, as follows:

Via e-Service and/or facsimile to:

Neema Amini
State Bar No. 24068915
E-mail: neema@aminiconant.com
R. Alex Conant
Texas Bar No. 24074061
E-mail: alex@aminiconant.com
AMINI & CONTANT, LLP
408 West 11th Street, 5th Floor
Austin, Texas 78701
(512) 222-6883
(512) 900-7967 fax
ATTORNEYS FOR PLAINTIFF

Jennifer MacGeorge
Texas Bar No. 24093627
MACGEORGE LAW FIRM PLLC
E-mail: jmac@jlm-law.com
2921 E. 17th Street, Bldg. D, Suite 1
Austin, Texas 78701
(512) 215-4129
(713) 583-9686 fax
ATTORNEYS FOR DEFENDANT

/s/ David W. May
DAVID W. MAY

EXHIBIT 1

Case History Report for Property 571904
Summary of Complaint CC-2013-094167

This Report mimics the Case History document template but allows for multiple Case Histories to be output together. The parameter entered is Propertyrsn.

COMPLAINT INFORMATION

Case Status: Closed

Address: 903 EDGECLIFF TER 78704

Legal Description: LOT 8 * & W25FT OF LOT 7 BLK 52 TRAVIS HEIGHTS

Property Owner(s): VOLUME TRADING INC LAWRENCE & STENSON LAW

Complaint Date: September 6, 2013

Complaint: Property owner operating without a STR license

INSPECTION INFORMATION

Investigator Assignment(s)

Irma Ybarra assigned on September 6, 2013

Transferred to Khalid Marshall - MARSHAKH on September 10, 2013

Case Log

| <u>DATE</u> | <u>STAFF NAME</u> | <u>ACTION TAKEN</u> |
|---|--------------------------|--|
| 09/12/2013 | Khalid Marshall | Insp/In process/Monitoring |
| On 20130912 at 1249 Investigator Marshall found no one at this property. It appears from towels and other items hanging on the railings at the rear property that this space may be occupied. Will continue to monitor this location for further activity. Photos Taken. This property was sent an STR letter on 05/01/2013 and an OL 13-055121 was opened on or around 05/24/2013. This OL is still pending and nothing has been submitted or applied for to obtain a license. | | |
| 01/23/2014 | Jim Richerson | No Violation(s) Found/Inspection Performed |
| 1-18-14, no STR activity, close case per SOP. JR | | |

| <u>DATE</u> | <u>STAFF NAME</u> | <u>ACTION TAKEN</u> |
|---|-------------------|----------------------------|
| 01/23/2014 | Jim Richerson | Insp/In process/Monitoring |
| On Saturday January 18, 2014 at 1:04 pm I knocked on the door but no one answered. I didn't see any STR activity. JR | | |

EXHIBIT 2

Case History Report for Property 571904
Summary of Complaint CC-2014-008624

This Report mimics the Case History document template but allows for multiple Case Histories to be output together. The parameter entered is Propertyrsn.

COMPLAINT INFORMATION

Case Status: Closed

Address: 903 EDGECLIFF TER 78704

Legal Description: LOT 8 *& W25FT OF LOT 7 BLK 52 TRAVIS HEIGHTS

Property Owner(s): VOLUME TRADING INC LAWRENCE & STENSON LAW - Owner

Complaint Date: January 29, 2014

Complaint: citizen states that he has called about this before and it is a illegal license short term rental
10/15/14- illegal str ongoing issue

INSPECTION INFORMATION

Investigator Assignment(s)

Michelle Stark assigned on January 29, 2014
Transferred to Alan Guyton - GUYTONA on October 11, 2017

Case Log

| <u>DATE</u> | <u>STAFF NAME</u> | <u>ACTION TAKEN</u> |
|-------------|-------------------|---|
| 02/01/2014 | Kesha Moore | Insp/In process/Monitoring I conducted an exterior inspection of the residential property and didn't observe any activity. |
| 02/06/2014 | Jim Richerson | Insp/In process/Monitoring On Thursday February 6, 2014 at 12:30 pm I observed no STR activity at this address. I knocked on the door but no one answered, I left my card at the door. I observed one car parked at the apartment in the back yard and observed it had Texas license plates. I also noticed a lock box on the front door. I checked different websites such as Trulia to see if the property was for sale, but I was unable to find any listing for 903 Edgecliff Terrace. JR |

| <u>DATE</u> | <u>STAFF NAME</u> | <u>ACTION TAKEN</u> |
|--|-------------------|--|
| 02/12/2014 | Marcus Elliott | Information Update |
| On 2/12/2014, I received an email, which included two Craigslist advertisements for 903 Edgecliff Terrace. Will contact number listed in ads for additional information. See document tab. | | |
| 02/12/2014 | Marcus Elliott | Manager/Contact Contacted |
| On 2/12/2014 (4:07 p.m.), I left a voicemail message, on the phone number listed in the ad, requesting a return call. | | |
| 02/15/2014 | Marcus Elliott | Inspection Performed |
| On 2/15/2014 (11:03 a.m.), I arrived at 903 Edgecliff Ter to investigate a complaint regarding an unlicensed short-term rental. No one responded to several knocks on the front door. Will continue to monitor location. Photos taken. | | |
| 03/07/2014 | Jim Richerson | Insp/In process/Monitoring |
| 3-7-14 at 12:47 I knocked on the door but no one answered, I took a photo and attached and updated AMANDA. I did not see any STR activity or any trash or debris. JR | | |
| 03/17/2014 | Jim Richerson | Insp/In process/Monitoring |
| On 3-14-14 at 12:29 pm I talked to a group of people from out town that were renting the property for SXSW. Photos attached. JR | | |
| 03/17/2014 | Jim Richerson | Insp/In process/Monitoring |
| 3-15-14 at 12:13 pm I completed another drive by inspection per Marcus Elliott. The same group was there from previous day. Photos attached. JR | | |
| 04/24/2014 | Marcus Elliott | Send CV Notice |
| Notice of violation mailed to the owner. | | |
| 04/24/2014 | Marcus Elliott | CV Violation(s) Found/Inspection Performed |
| On 3-14-14 at 12:29 pm, I talked to a group of people from out town that were renting the property for SXSW. Per Ordinance No. 20130926-144, a person may not operate a Short-Term Rental (STR) without an operating license. A notice of violation will be mailed to the owner. Photos taken. | | |
| 05/01/2014 | Marcus Elliott | Follow-up Inspection |
| On 4/26/2014 (10:01 a.m.), Inspector Leah Morgan arrived at 903 Edgecliff Terrace to conduct a follow-up inspection. According to Inspector Morgan, six people were staying in the front house. The occupants told Inspector Morgan that they were renting the location for the weekend. Photos taken. | | |
| 05/24/2014 | Kesha Moore | Follow-up Inspection |
| I conducted an exterior inspection of the residential property and didnt observe any activity. Monitor. Photos taken. | | |
| 08/27/2014 | Marion Wynn | Follow-up Inspection |
| On 27 Aug 14, I went to the residence at 9:59 am. I observed one vehicle (small pick-up) parked in front of the guesthouse and one in front of the residence. There was a large pickup truck and van were across the street (they appear to be maintenance service vehicles). Photos taken. | | |

| <u>DATE</u> | <u>STAFF NAME</u> | <u>ACTION TAKEN</u> |
|---|-------------------|----------------------|
| 08/27/2014 | Marion Wynn | Follow-up Inspection |
| I returned to the residence on 27 Aug 14 at 12:34 pm, I knocked on the door but no one answered. I observed a different vehicle in front of the guesthouse. I left my contact information in the door. Photos taken. | | |
| 09/15/2014 | Marcus Elliott | Follow-up Inspection |
| On 9/13/2014 (11:16 a.m.), I arrived at 903 Edgecliff Terrace for a follow-up inspection. No one responded to several knocks on the front door. Two vehicles were parked on the street adjacent to the property. Photos taken. | | |
| 12/29/2014 | Marcus Elliott | Follow-up Inspection |
| On 12/27/2014 (10:12 a.m.), I arrived at 903 Edgecliff Terrace for a scheduled follow-up inspection. Evan Lovett and Sylvia Walton were renting the rear structure at this location. Mr. Lovett and Ms. Walton gave me permission to enter the unit to verify the owners were operating a Short-Term Rental (STR) without the required license. Since the owner did not comply with the notice of violation, this case will be prepared for legal action. Photos taken. | | |
| 12/29/2014 | Marcus Elliott | Information Update |
| According to the Secretary of State, Santa Eulalia, Inc., filed its Articles of Incorporation on Feb. 20, 2013, and Bret Vance was the initial director. | | |
| 12/29/2014 | Marcus Elliott | Information Update |
| According to the Secretary of State, Volume Trading, Inc., forfeited its charter, certificate or registration on Dec. 3, 2010. At that time, Bret Vance was still the only director of Volume Trading, Inc. | | |
| 12/29/2014 | Marcus Elliott | Information Update |
| According to the Secretary of State, Volume Trading, Inc., the owner of 903 Edgecliff Terrace, filed its Articles of Incorporation on Dec. 12, 2008, and Bret Vance was the initial director. | | |
| 12/29/2014 | Marcus Elliott | Information Update |
| According to the Austin Energy database, an account is listed under the name, Santa Eulalia, Inc. (512) 444-4450. | | |
| 12/29/2014 | Marcus Elliott | Information Update |
| Based on the information provided by the Secretary of State and Austin Energy, charges will be filed on Bret Vance for operating a Short-Term Rental (STR) without the required license. Forwarding the case for judicial action. | | |
| 01/15/2015 | Marcus Elliott | LC Review |
| 04/01/2015 | Marcus Elliott | Information Update |
| On 4/1/2015, I reported this location to the State Comptroller's Enforcement Office for failure to pay the required hotel occupancy taxes. Austin Code confirmed the property was rented on the following dates: 3/14/2014, 4/26/2014 and 12/29/2014. | | |
| 01/03/2018 | Alan Guyton | Information Update |
| This case is still in legal. | | |

| <u>DATE</u> | <u>STAFF NAME</u> | <u>ACTION TAKEN</u> |
|--|-------------------|---|
| 03/08/2018 | Alan Guyton | Follow-up Inspection |
| While conducting this follow up inspection this property displayed no activity. I knocked on door but nobody answered. Property does not have an active license. No activity found at this time during this inspection. | | |
| 09/28/2018 | Alan Guyton | Follow-up Inspection |
| While conducting a follow up inspection this property displayed no activity. I attempted to make contact with the occupant but was unsuccessful in doing so. I listened for any loud noises from public view and heard none. No violations found at the time of inspection. | | |
| 09/28/2018 | Alan Guyton | Legal Action-All Deficiencies Satisfied |
| | | |
| 10/20/2018 | Alan Guyton | Inspection Performed |
| While conducting this inspection this property displayed no activity. I attempted to make contact with the occupant but was unsuccessful in doing so. I listened for any loud noises from public view and heard none. I will follow up with this location again and see if any thing change. | | |

EXHIBIT 2a



City of Austin

Founded By Congress, Republic of Texas 1839
Code Compliance Department
P.O. Box 1088, Austin, Texas 78767 - 1088

April 24, 2014

NOTICE OF VIOLATION
via Certified Mail # 7013 2630 0002 0463 0357

Volume Trading, Inc.
% Lawrence & Stenson Law
510 S Congress Ave Ste 108
Austin, Texas 78704-1737

RE: 903 EDGECLIFF TER 78704

Legally described as LOT 8 * & W25FT OF LOT 7 BLK 52 TRAVIS HEIGHTS
Zoned as SF-3-NP
Parcel Number 0301040302

Dear Volume Trading Inc.:

An investigation by the City of Austin's Code Compliance Department was conducted relating to the property indicated above and violations of Austin City Code were found that require your immediate attention. An investigation report is enclosed which defines the code violation(s) found with required remedies for attaining compliance with the City Code.

After receipt of this notice, you may not sell, lease, or give away this property unless you have provided the buyer, lessee, or other transferee a copy of this notice, and provided the name and address of the buyer to the Code Official. Also, it is a misdemeanor to rent this property if the code violation(s) on this property pose a danger to the health, safety and welfare of the tenants.

If you have any questions, please contact me by telephone at 512-974-1951 between 7:30AM - 4:00PM. You may leave a voicemail message at any time.

Si usted tiene alguna pregunta, contácteme por favor por teléfono en 512-974-1951 de lunes a viernes o puede dejar un mensaje de correo vocal en cualquier momento.

Ownership Information

According to the applicable records of the County, you own the real property described in this notice. If you no longer own this property, you must execute an affidavit stating that you no longer own the property and stating the name with the last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to our office not later than the 20th day after the date you receive this notice. If you do not submit an affidavit, it will be presumed that you own the property described in this notice, even if you do not.

An affidavit form is available at our office located at 1520 Rutherford Lane. An affidavit may be mailed to:

City of Austin
Code Compliance Department
P.O. Box 1088
Austin, Texas 78767

Additionally, if this property has other owner(s), please provide me with this information.

Failure to Correct

If a violation is not corrected, any existing site plan, permit, or certificate of occupancy may be suspended or revoked by the City. If the site plan, permit or certificate of occupancy is suspended or revoked, the utility service to this property may be disconnected.

If the violation continues, the City may take further legal action to prevent the unlawful action as authorized by State law and may seek civil injunctions or penalties in State court.

For dangerous or substandard buildings, the City may also take further action to require the vacation, relocation of occupants, securing, repair, removal or demolition of a building.

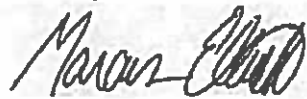
If the violations are not brought into compliance within the timeframes listed in the investigation report, criminal charges may be filed against you in the City of Austin Municipal Court subjecting you to fines of up to \$2,000 per violation, per day.

Complaints

To register a complaint regarding a Code Compliance Department investigator, you may submit your complaint in writing no later than 3 days after receipt of this letter to:

City of Austin
Code Compliance Department Manager
P.O. Box 1088
Austin, Texas 78767

Sincerely,



Marcus Elliott, Assistant Division Manager
Code Compliance Department
Case CV-2014-041821

INVESTIGATION REPORT

Investigator: Marcus Elliott
Case: CV-2014-041821
Address: 903 EDGECLIFF TER 78704
Zoned as SF-3-NP

The item(s) listed below are in violation of the Austin City Code. A required remedy may be specified after a violation and may include a time period for compliance. If no required remedy is specified for a violation, the Required Remedy Summary will be in effect. For questions concerning residential property, please contact the Zoning Review Division at (512) 978-4000. For questions concerning commercial property, please contact the Development Assistance Center (DAC) at (512) 974-6370.

LAND USE

Code Section: Short-Term Rental (Type 2) Regulations (§25-2-789)
Description of Violation: A person must obtain a license prior to operating a Short-Term Rental (STR).
Date Observed: March 14, 2014 Status: Not Cleared
Required Remedy: Obtain a Short-Term Rental (STR) License within 14 days.

Required Remedy Summary

Obtain a Short-Term Rental (STR) License in 14 days

NOTE: The time period(s) indicated in this summary reflect the total time allowed for compliance. A time period indicated in an individual violation's required remedy is the actual time allowed for compliance of that individual violation. If no time period is indicated in an individual violation's required remedy, the summary time period associated with the required remedy will be the time allowed for compliance.

Appeal

A person may appeal a Stop Work Order to the City of Austin's Code Official. A written appeal must be filed no later than 3 days after the posting of the Order and contain:

- the name and address of the appellant;
- a statement of facts;
- the decision being appealed; and
- the reasons the decision should be set aside.

An appeal may be delivered in person to Code Compliance Department located at 1520 Rutherford Lane, Building 1-Security Desk or mailed to:

Code Official
Code Compliance Department
P.O. Box 1088
Austin, Texas 78767

EXHIBIT 3

Austin Code Department Hearing Number: SPW 20190131.4

In Regard to the Matter of

**City of Austin
Code Department
"City"**

V.

Bret Vance
903 Edgecliff Terrace
Austin, Texas 78704
"Property Owner"

www.ck12.org

Cause No. CL-18-181752

DECISION OF THE INDEPENDENT HEARING OFFICER

A hearing was convened Thursday, January 31, 2018 at 1:00 p.m. at the City of Austin Utility Service Center, 8716 Research Blvd., Suite 115, Austin, Texas, 78758 before Independent Hearing Officer Stephen P. Webb. The purpose of the hearing was to consider the validity of *Administrative Citation No. 4490* issued to Bret Vance (“Property Owner” or “Respondent”) of a citation issued to the Property Owner for violation of the City of Austin’s ordinance related to short-term rentals. The property that is the subject of the appeal is located at 903 Edgecliff, Austin, Texas 78704 (“the Property”). The City of Austin was represented by Douglas Jansky, Administrative Hearings Coordinator—Legal Division, City of Austin Code Department; and Dana Brockington, Code Enforcement Officer, City of Austin Code Department. Bret Vance, appeared at the hearing on his own behalf, and was represented by Jennifer MacGeorge, attorney at law.

I. Issue

Whether Property Owners should be assessed fines for violation of the Austin City Code (“City Code”), §25-2-794- GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS, for advertising a short-term rental (“STR”) without a license.

II. Findings of Fact

Based upon the testimony and written evidence submitted at the hearing, I make the following factual findings:

1. Respondents are the owners of residential property located at 903 Edgecliff Terrace, Texas 78704 ("the Property"). The Property is legally described as LOT 8 * & W25FT OF LOT 7 BLK 52 TRAVIS HEIGHTS Zoned as SF-3-NP.
2. On October 4, 2018, Officer Chris Kobitz, Code Enforcement Officer ("Officer Kobitz"), located an advertisement for the Property available to be rented at \$506 per night with a two (2) night minimum, and confirmed that there was no valid license to operate as a short-term rental listed in the advertisement. Consequently, Officer Kobitz sent Respondent a Notice of Code Violation.
3. On October 17, 2018, Officer Kobitz researched the Property and found that the advertisement was still active. Officer Kobitz issued *Administrative Citation Ticket Number No. 004490* for Advertising an STR without a valid STR license. Officer Kobitz left a copy of *Administrative Citation Ticket No. 004490* posted to the door of the Property.
4. Respondent contends that he never received Notice of Code Violation. Further, through his attorney, Respondent claims that a listing for a "two (2) night minimum" is not *prima facie* evidence of a short-term rental because it is not necessarily offering the Property for rental for less than the thirty (30) necessary to avoid being a violation of Austin City Code §25-2-788. Finally, Respondent maintains that the licensure process was time-consuming, prohibiting unencumbered enjoyment of his Property.
5. The City maintains that receipt of a Notice of Code Violation in the mail does not preclude Respondent being charged with knowledge of the City's short-term rental license requirements. Moreover, the City states that it is not required to send a notice, but may directly issue a citation.

III. Decision

A. Applicable Ordinances (City of Austin Regulations)

§ 25-2-794 - GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS.

- (A) A licensee or guest of a short-term rental may not use or allow the use of sound equipment that produces sound in excess of 75 decibels at the property line between 10:00 a.m. and 10:00 p.m.
- (B) A licensee or guest of a short-term rental may not use or allow use of sound equipment that produces sound audible beyond the property line between 10:00 p.m. and 10:00 a.m.
- (C) A licensee or guest of a short-term rental shall not make or allow another to make noise or play a musical instrument audible to an adjacent business or residence between 10:30 p.m. and 7:00 a.m.
- (D) If a building permit prohibiting occupancy of the structure is active, no person may occupy, for sleeping or living purposes, the structure until final inspections have been passed and the building permit is closed.
- (E) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental without including:
 - (1) the license number assigned by the City to the short-term rental; and
 - (2) the applicable occupancy limit for the short-term rental.
- (F) An owner, or a person in control of a dwelling, may not advertise or promote, or allow another to advertise or promote, the dwelling as a short-term rental if the dwelling is not licensed by the director as a short-term rental.
- (G) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental in violation of the City Code or state law.
- (H) A person must obtain a license to operate a short-term rental before a property may be used as a short-term rental.
- (I) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this subsection, dwelling unit means the area being used as a short-term rental, including a partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

Ordinance 20160223-A.1

§ 25-2-788 - SHORT-TERM RENTAL (TYPE 1) REGULATIONS.

- (A) This section applies to a short-term rental use that:
 - (1) is rented for periods of less than 30 consecutive days; and

- (2) is owner-occupied or is associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
 - (1) include the rental of less than an entire dwelling unit, unless all of the following conditions are met:
 - (a) a partial unit must at a minimum include the exclusive use of a sleeping room and shared use of a full bathroom;
 - (b) the owner is generally present at the licensed short-term rental property for the duration of any short-term rental of a partial unit;
 - (c) not more than one partial unit at the property is simultaneously rented for any period less than 30 consecutive days; and
 - (d) rental of the partial unit is limited to a single party of individuals;
 - (2) operate without a license as required by Section 25-2-791 (*License Requirements*);
 - (3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*); or
 - (4) include a secondary dwelling unit or secondary apartment except as provided by Section 25-2-774(C)(6) (*Two Family Residential Use*) and 25-2-1463(C)(6) (*Secondary Apartment Regulations*).

*Ord. 20120802-122; Ord. 20130926-144;
& Ord. 20151119-080*

PART 2. City Code Section 2-13-23 (*Establishing a Penalty*) is amended to amend Subsections (A) and (B); and to add new Subsections (D) through (I) to read as follows:

§2-13-23 ESTABLISHING A PENALTY.

- (A) Except as provided in Subsections (D) and (G), the penalty range that may be assessed against a violator found liable under this chapter shall be no more than \$1,000 and:
 - (1) not less than \$250.00 for a first violation;
 - (2) not less than \$500.00 for a second violation; and
 - (3) not less than \$750.00 for a third or subsequent violation.
- (B) In addition to the penalty assessed, the hearing officer must require the violator found liable under this chapter to pay costs set by separate ordinance.

- (D) Except as provided in Subsection (G), the penalty range that may be assessed against a violator found liable under this chapter for violating Chapter 25-2 (*Zoning*) of the City Code shall be no more than \$1,000 and:
- (1) not less than \$500.00 for a first violation;
 - (2) not less than \$750.00 for a second violation; and
 - (3) not less than \$1,000.00 for a third or subsequent violation.
- (E) A violator who has been found liable for a violation may assert a financial inability to pay the penalty. If a violator asserts a financial inability to pay the penalty, the hearing officer must make a determination of financial inability to pay. The determination must be made based on documentary evidence provided to the hearing officer.
- (F) A violator claiming a financial inability to pay the penalty must have an income that does not exceed 60 percent of the United States Department of Housing and Urban Development (HUD) median family income (MFI) in the Austin-Round Rock-San Marcos area and must be a resident of the property or premises subject of the administrative citation and the sole owner of the property or premises, except that a violator may be a co-owner of the property or premises if all other co-owners cannot be located or are financially unable to pay the penalty.
- (G) If the hearing officer determines that the violator does not have the financial ability to pay the penalty, the hearing officer must make the finding in writing and must reduce the penalty to an amount that is within the violator's ability to pay.
- (H) A violator cannot appeal the hearing officer's determination related to the violator's financial inability to pay.
- (I) A violator who has been found liable for a violation may request to pay the penalty in equal installments during the six months from the date the hearing officer issues an order. A violator must request to pay the penalty in installments within 20 calendar days from the date the hearing officer issues the order and must waive the appeal described in Section 2-13-31 (*Appeal From a Hearing*). The Code Official is authorized to grant a request to pay the penalty as described in this subsection.

PART 3. The 2016-2017 Fee Schedule, attached as Exhibit "A" to Ordinance No. 20160914-003, is amended to add a fee associated with "Administrative Hearings" to read as follows:

Austin Code Department

| | FY 2015-16 | FY 2016-17 | Note | Change |
|-----------------------|---------------|----------------|------------------------------|------------|
| <u>Administrative</u> | <u>\$0.00</u> | <u>\$80.00</u> | <u>if violator is liable</u> | <u>New</u> |
| <u>Hearing Costs</u> | | | | |
| <u>(Chapter 2-13)</u> | | | | |

B. Discussion

The facts of this case support the validity of *Administrative Citation Ticket Number No. 004490* for advertising the Property as an unlawful short-term rental without a valid license issued by the City of Austin. Respondents are responsible for knowledge of and compliance with applicable City ordinances and the applicable sections of the City Code which preclude advertising or operating properties as short term rentals without a valid license to do so. Respondent was provided with notice and opportunity to be heard on this issue in accordance with the referenced citation.

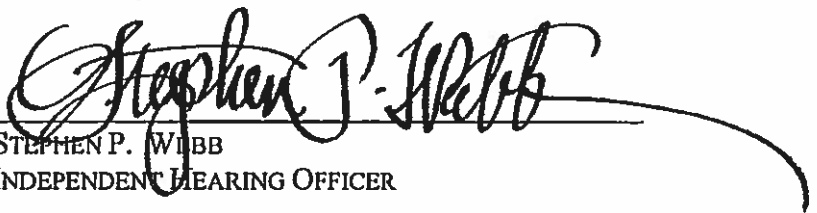
Respondent argues that the City did not show that he was operating an unlicensed short-term rental either by the language in the online advertisement or through evidence of an actual short-term rental tenant. Therefore, under Respondent's argument, Austin City Code §25-2-794(I) would prevent Respondent being issued *Administrative Citation Ticket Number No. 004490*.

Respondent's argument is novel but unpersuasive. The ordinary meaning of a public advertisement without further explanation or reference to the Austin City Code is that the Property is available for rental at \$506 per night for a minimum of two (2) days and not thirty (30) days, as is lawful under §25-2-788(A). Therefore, the advertisement states that a prospective tenant can rent the Property for a period less than Austin's short-term rental ordinance allows when a property owner does not have an STR license. As to Respondent's argument using §25-2-794(I), Respondent presupposes that §25-2-794(E) and (G) to not prescribe *independent* bases for an Austin resident's compliance with the STR ordinance. A person is not allowed to *hold a property out for rental* in Austin without compliance with §25-2-794(E) and (G) regardless of whether that person is successful in attracting an actual renter. The *attempt* at being an unauthorized STR in an advertisement is also a violation.

I conclude that Property Owner violated City of Austin Code of Ordinances §25-2-794 by advertising the Property at 903 Edgecliff Terrance, Austin, Texas 78704 as a short-term rental without a valid license issued by the City of Austin. Under §2-13-23(D), cited herein, a minimum penalty of \$500.00 is normally required for this first violation for

operating without a license in violation of City Code §25-2-794, in addition to an \$128.00 administrative hearing fee.

Signed this 5th day of February, 2019.


STEPHEN P. WEBB
INDEPENDENT HEARING OFFICER

Whether Property Owner should be assessed fines for violation of the Austin City Code ("City Code"), §25-2-794- GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS, for advertising a short-term rental ("STR") without a license.

II. Findings of Fact

Based upon the testimony and written evidence submitted at the hearing, I make the following factual findings:

1. Respondent is the owners of residential property located at 903 Edgecliff Terrace, Austin, Texas 78704 ("the Property"). The Property is legally described as LOT 8 * & W25FT OF LOT 7 BLK 52 TRAVIS HEIGHTS Zoned as SF-3-NP.
2. On October 4, 2018, Officer Chris Kobitz, Code Enforcement Officer ("Officer Kobitz"), discovered an active advertisement for the Property. After confirming that there was no valid STR license, Officer Kobitz sent Respondent a Notice of Code Violation.
3. Officer Kobitz issued *Administrative Citation Ticket Number No. 004601* on October 17, 2018 for advertising an STR without a valid STR license based on the discovery that the advertisement was still active.
4. On October 26, 2018, Officer Kobitz discovered that the advertisement for the Property was still active.
5. On November 8, 2018, Officer Kobitz discovered that the advertisement for the Property was still active despite the Property's not being licensed.

III. Decision

A. Applicable Ordinances (City of Austin Regulations)

§ 25-2-794 - GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS.

- (A) A licensee or guest of a short-term rental may not use or allow the use of sound equipment that produces sound in excess of 75 decibels at the property line between 10:00 a.m. and 10:00 p.m.
- (B) A licensee or guest of a short-term rental may not use or allow use of sound equipment that produces sound audible beyond the property line between 10:00 p.m. and 10:00 a.m.

- (C) A licensee or guest of a short-term rental shall not make or allow another to make noise or play a musical instrument audible to an adjacent business or residence between 10:30 p.m. and 7:00 a.m.
- (D) If a building permit prohibiting occupancy of the structure is active, no person may occupy, for sleeping or living purposes, the structure until final inspections have been passed and the building permit is closed.
- (E) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental without including:
 - (1) the license number assigned by the City to the short-term rental; and
 - (2) the applicable occupancy limit for the short-term rental.
- (F) An owner, or a person in control of a dwelling, may not advertise or promote, or allow another to advertise or promote, the dwelling as a short-term rental if the dwelling is not licensed by the director as a short-term rental.
- (G) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental in violation of the City Code or state law.
- (H) A person must obtain a license to operate a short-term rental before a property may be used as a short-term rental.
- (I) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this subsection, dwelling unit means the area being used as a short-term rental, including a partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

Ordinance 20160223-A.1

§ 25-2-788 - SHORT-TERM RENTAL (TYPE 1) REGULATIONS.

- (A) This section applies to a short-term rental use that:
 - (1) is rented for periods of less than 30 consecutive days; and
 - (2) is owner-occupied or is associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
 - (1) include the rental of less than an entire dwelling unit, unless all of the following conditions are met:
 - (a) a partial unit must at a minimum include the exclusive use of a sleeping room and shared use of a full bathroom;
 - (b) the owner is generally present at the licensed short-term rental property for the duration of any short-term rental of a partial unit;
 - (c) not more than one partial unit at the property is simultaneously rented for any period less than 30 consecutive days; and

- (d) rental of the partial unit is limited to a single party of individuals;
- (2) operate without a license as required by Section 25-2-791 (*License Requirements*);
- (3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*); or
- (4) include a secondary dwelling unit or secondary apartment except as provided by Section 25-2-774(C)(6) (*Two Family Residential Use*) and 25-2-1463(C)(6) (*Secondary Apartment Regulations*).

*Ord. 20120802-122; Ord. 20130926-144;
& Ord. 20151119-080*

PART 2. City Code Section 2-13-23 (*Establishing a Penalty*) is amended to amend Subsections (A) and (B); and to add new Subsections (D) through (I) to read as follows:

§2-13-23 ESTABLISHING A PENALTY.

- (A) Except as provided in Subsections (D) and (G), the penalty range that may be assessed against a violator found liable under this chapter shall be no more than \$1,000 and:
 - (1) not less than \$250.00 for a first violation;
 - (2) not less than \$500.00 for a second violation; and
 - (3) not less than \$750.00 for a third or subsequent violation.
- (B) In addition to the penalty assessed, the hearing officer must require the violator found liable under this chapter to pay costs set by separate ordinance.
- (D) Except as provided in Subsection (G), the penalty range that may be assessed against a violator found liable under this chapter for violating Chapter 25-2 (*Zoning*) of the City Code shall be no more than \$1,000 and:
 - (1) not less than \$500.00 for a first violation;
 - (2) not less than \$750.00 for a second violation; and
 - (3) not less than \$1,000.00 for a third or subsequent violation.
- (E) A violator who has been found liable for a violation may assert a financial inability to pay the penalty. If a violator asserts a financial inability to pay the penalty, the hearing officer must make a determination of financial inability to pay. The determination must be made based on documentary evidence provided to the hearing officer.
- (F) A violator claiming a financial inability to pay the penalty must have an income that does not exceed 60 percent of the United States Department of Housing and Urban Development (HUD) median family income (MFI) in the Austin-Round Rock-San Marcos area and must be a resident of the property or premises subject

of the administrative citation and the sole owner of the property or premises, except that a violator may be a co-owner of the property or premises if all other co-owners cannot be located or are financially unable to pay the penalty.

- (G) If the hearing officer determines that the violator does not have the financial ability to pay the penalty, the hearing officer must make the finding in writing and must reduce the penalty to an amount that is within the violator's ability to pay.
- (H) A violator cannot appeal the hearing officer's determination related to the violator's financial inability to pay.
- (I) A violator who has been found liable for a violation may request to pay the penalty in equal installments during the six months from the date the hearing officer issues an order. A violator must request to pay the penalty in installments within 20 calendar days from the date the hearing officer issues the order and must waive the appeal described in Section 2-13-31 (*Appeal From a Hearing*). The Code Official is authorized to grant a request to pay the penalty as described in this subsection.

PART 3. The 2016-2017 Fee Schedule, attached as Exhibit "A" to Ordinance No. 20160914-003, is amended to add a fee associated with "Administrative Hearings" to read as follows:

Austin Code Department

| | FY 2017-18 | FY 2018-19 | Note | Change |
|-----------------------|-------------------|-------------------|------------------------------|---------------|
| <u>Administrative</u> | <u>\$80.00</u> | <u>\$128.00</u> | <u>if violator is liable</u> | <u>New</u> |
| <u>Hearing Costs</u> | | | | |
| <u>(Chapter 2-13)</u> | | | | |

Ordinance No. 20170413-002

B. Discussion

It is undisputed that the Property Owner was advertising the Property as a short-term rental without a valid license in violation of City Code §25-2-794. The facts of this case support the validity of *Administrative Citation Ticket Number No. 004601* for advertising the Property as an unlawful short-term rental without a valid license issued by the City of Austin. Respondent is responsible for knowledge of and compliance with applicable City ordinances and the applicable sections of the City Code which preclude advertising or operating properties as short term rentals without a valid license to do so. Moreover, the Property Owner had reason to know that an STR license was needed because

Respondent was provided with notice and opportunity to be heard on this issue in accordance with the referenced citation.

I conclude that Property Owner violated City of Austin Code of Ordinances §25-2-794 by advertising the Property at 903 Edgecliff Terrace, Austin, Texas 78704 as a short-term rental without a valid license issued by the City of Austin. Under §2-13-23(D), cited herein, a minimum penalty of \$500.00 is normally required for this first violation for operating without a license in violation of City Code §25-2-794, in addition to an \$128.00 administrative hearing fee.

Signed this 26th day of February, 2019.



STEPHEN P. WEBB
INDEPENDENT HEARING OFFICER

Cause No. CL-18-193974

Whether Property Owner should be assessed fines for violation of the Austin City Code ("City Code"), §25-2-794- GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS, for advertising a short-term rental ("STR") without a license over the occupancy limit.

II. Findings of Fact

Based upon the testimony and written evidence submitted at the hearing, I make the following factual findings:

1. Respondent is the owners of residential property located at 903 Edgecliff Terrace, Austin, Texas 78704 ("the Property"). The Property is legally described as LOT 8 * & W25FT OF LOT 7 BLK 52 TRAVIS HEIGHTS Zoned as SF-3-NP.
2. On October 4, 2018, Officer Chris Kobitz, Code Enforcement Officer ("Officer Kobitz"), discovered an active advertisement for the Property. After confirming that there was no valid STR license, Officer Kobitz sent Respondent a Notice of Code Violation.
3. Property Owner's online advertisement provides: "one mile from downtown located in Travis Heights 78704 the coolest neighborhood in Austin right over the boardwalk on the river. 4 king 2 queen 2 twin beds, 3000 square feet, sleeps 16. Pets welcome. Walking distance to downtown and SOC."
4. Officer Kobitz issued *Administrative Citation Ticket Number No. 004601* on October 17, 2018 for advertising an STR without a valid STR license based on the discovery that the advertisement was still active.
5. On November 8, 2018, Officer Kobitz discovered that the advertisement for the Property was still active and offered the occupancy for sixteen (16) guests, despite the Property's not being licensed.
6. The Property has seven bedrooms that the Respondent contends allows him to book two guests per bedroom and two additional guests. However, as an unlicensed STR, the house is presumed to have two bedrooms, which would limit the occupancy to six: two guests per bedroom plus an additional two guests. Moreover, even if licensed, there is no provision for the lawful housing of sixteen guests a night at the Property.

III. Decision

A. Applicable Ordinances (City of Austin Regulations)

§ 25-2-794 - GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS.

- (A) A licensee or guest of a short-term rental may not use or allow the use of sound equipment that produces sound in excess of 75 decibels at the property line between 10:00 a.m. and 10:00 p.m.
- (B) A licensee or guest of a short-term rental may not use or allow use of sound equipment that produces sound audible beyond the property line between 10:00 p.m. and 10:00 a.m.
- (C) A licensee or guest of a short-term rental shall not make or allow another to make noise or play a musical instrument audible to an adjacent business or residence between 10:30 p.m. and 7:00 a.m.
- (D) If a building permit prohibiting occupancy of the structure is active, no person may occupy, for sleeping or living purposes, the structure until final inspections have been passed and the building permit is closed.
- (E) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental without including:
 - (1) the license number assigned by the City to the short-term rental; and
 - (2) the applicable occupancy limit for the short-term rental.
- (F) An owner, or a person in control of a dwelling, may not advertise or promote, or allow another to advertise or promote, the dwelling as a short-term rental if the dwelling is not licensed by the director as a short-term rental.
- (G) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental in violation of the City Code or state law.
- (H) A person must obtain a license to operate a short-term rental before a property may be used as a short-term rental.
- (I) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this subsection, dwelling unit means the area being used as a short-term rental, including a partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

Ordinance 20160223-A.1

§ 25-2-795 - OCCUPANCY LIMITS FOR SHORT-TERM RENTALS.

(A) In this section:

- (1) ADULT means a person 18 years of age or older.

- (2) DOMESTIC PARTNERSHIP means adults living in the same household and sharing common resources of life in a close, personal, and intimate relationship.
- (3) UNRELATED means not connected by consanguinity, marriage, domestic partnership, or adoption.
- (B) Unless a stricter limit applies, not more than two adults per bedroom plus two additional adults may be present in a short-term rental between 10:00 p.m. and 7:00 a.m.
- (C) A short-term rental is presumed to have two bedrooms, except as otherwise determined through an inspection approved by the director.
- (D) A licensee or guest may not use or allow another to use a short-term rental for an assembly between 10:00 p.m. and 7:00 a.m.
- (E) A licensee or guest may not use or allow another to use a short-term rental for an outside assembly of more than six adults between 7:00 a.m. and 10:00 p.m.
- (F) For purposes of this section, an assembly includes a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping.
- (G) A short-term rental use may not be used by more than:
 - (1) ten adults at one time, unless a stricter limit applies; or
 - (2) six unrelated adults.
- (H) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this subsection, dwelling unit means the area being used as a short-term rental, including the partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

Ordinance 20160223-A.1

§ 25-2-788 - SHORT-TERM RENTAL (TYPE 1) REGULATIONS.

- (A) This section applies to a short-term rental use that:
 - (1) is rented for periods of less than 30 consecutive days; and
 - (2) is owner-occupied or is associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
 - (1) include the rental of less than an entire dwelling unit, unless all of the following conditions are met:
 - (a) a partial unit must at a minimum include the exclusive use of a sleeping room and shared use of a full bathroom;

- (b) the owner is generally present at the licensed short-term rental property for the duration of any short-term rental of a partial unit;
- (c) not more than one partial unit at the property is simultaneously rented for any period less than 30 consecutive days; and
- (d) rental of the partial unit is limited to a single party of individuals;
- (2) operate without a license as required by Section 25-2-791 (*License Requirements*);
- (3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*); or
- (4) include a secondary dwelling unit or secondary apartment except as provided by Section 25-2-774(C)(6) (*Two Family Residential Use*) and 25-2-1463(C)(6) (*Secondary Apartment Regulations*).

*Ord. 20120802-122; Ord. 20130926-144;
& Ord. 20151119-080*

PART 2. City Code Section 2-13-23 (*Establishing a Penalty*) is amended to amend Subsections (A) and (B); and to add new Subsections (D) through (I) to read as follows:

§2-13-23 ESTABLISHING A PENALTY.

- (A) Except as provided in Subsections (D) and (G), the penalty range that may be assessed against a violator found liable under this chapter shall be no more than \$1,000 and:
 - (1) not less than \$250.00 for a first violation;
 - (2) not less than \$500.00 for a second violation; and
 - (3) not less than \$750.00 for a third or subsequent violation.
- (B) In addition to the penalty assessed, the hearing officer must require the violator found liable under this chapter to pay costs set by separate ordinance.
- (D) Except as provided in Subsection (G), the penalty range that may be assessed against a violator found liable under this chapter for violating Chapter 25-2 (*Zoning*) of the City Code shall be no more than \$1,000 and:
 - (1) not less than \$500.00 for a first violation;
 - (2) not less than \$750.00 for a second violation; and
 - (3) not less than \$1,000.00 for a third or subsequent violation.
- (E) A violator who has been found liable for a violation may assert a financial inability to pay the penalty. If a violator asserts a financial inability to pay the penalty, the hearing officer must make a determination of financial inability to pay. The

determination must be made based on documentary evidence provided to the hearing officer.

- (F) A violator claiming a financial inability to pay the penalty must have an income that does not exceed 60 percent of the United States Department of Housing and Urban Development (HUD) median family income (MFI) in the Austin-Round Rock-San Marcos area and must be a resident of the property or premises subject of the administrative citation and the sole owner of the property or premises, except that a violator may be a co-owner of the property or premises if all other co-owners cannot be located or are financially unable to pay the penalty.
- (G) If the hearing officer determines that the violator does not have the financial ability to pay the penalty, the hearing officer must make the finding in writing and must reduce the penalty to an amount that is within the violator's ability to pay.
- (H) A violator cannot appeal the hearing officer's determination related to the violator's financial inability to pay.
- (I) A violator who has been found liable for a violation may request to pay the penalty in equal installments during the six months from the date the hearing officer issues an order. A violator must request to pay the penalty in installments within 20 calendar days from the date the hearing officer issues the order and must waive the appeal described in Section 2-13-31 (*Appeal From a Hearing*). The Code Official is authorized to grant a request to pay the penalty as described in this subsection.

PART 3. The 2016-2017 Fee Schedule, attached as Exhibit "A" to Ordinance No. 20160914-003, is amended to add a fee associated with "Administrative Hearings" to read as follows:

Austin Code Department

| | FY 2017-18 | FY 2018-19 | Note | Change |
|-----------------------|----------------|-----------------|------------------------------|------------|
| <u>Administrative</u> | <u>\$80.00</u> | <u>\$128.00</u> | <u>if violator is liable</u> | <u>New</u> |
| <u>Hearing Costs</u> | | | | |
| <u>(Chapter 2-13)</u> | | | | |


Ordinance No. 20170413-002

B. Discussion

It is undisputed that the Property Owner was advertising the Property as a short-term rental without a valid license over the legally allowed occupancy limits in violation of City Code §25-2-795. The facts of this case support the validity of *Administrative Citation Ticket Number No. 004602* for advertising the Property as an unlawful short-term rental over the occupancy limit issued by the City of Austin. Respondent is responsible for knowledge of and compliance with applicable City ordinances and the applicable sections of the City Code which preclude advertising or operating properties as short term rentals without a valid license to do so and complying with the City's occupancy limits for guests. Moreover, the Property Owner had reason to know that the advertised occupancy was over the limit because Respondent was in the process of applying for a license, which does not allow for more than ten (10) people on any STR for the duration of the rental.

I conclude that Property Owner violated City of Austin Code of Ordinances §25-2-795 by advertising the Property at 903 Edgecliff Terrace, Austin, Texas 78704 as a short-term rental over the occupancy limit issued by the City of Austin. Under §2-13-23(D), cited herein, a minimum penalty of \$500.00 is normally required for this first violation for operating without a license in violation of City Code §25-2-794, in addition to an \$128.00 administrative hearing fee.

Signed this 26th day of February, 2019.


STEPHEN P. WEBB
INDEPENDENT HEARING OFFICER

Cause No. CL-18-202340

Whether Property Owner should be assessed fines for violation of the Austin City Code ("City Code"), §25-2-794- GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS, for advertising a short-term rental ("STR") without a license.

II. Findings of Fact

Based upon the testimony and written evidence submitted at the hearing, I make the following factual findings:

1. Respondent is the owners of residential property located at 903 Edgecliff Terrace, Austin, Texas 78704 ("the Property"). The Property is legally described as LOT 8 * & W25FT OF LOT 7 BLK 52 TRAVIS HEIGHTS Zoned as SF-3-NP.
2. On October 4, 2018, Officer Chris Kobitz, Code Enforcement Officer ("Officer Kobitz"), discovered an active advertisement for the Property. After confirming that there was no valid STR license, Officer Kobitz sent Respondent a Notice of Code Violation.
3. Officer Kobitz issued *Administrative Citation Ticket Number No. 004601* on October 17, 2018 for advertising an STR without a valid STR license based on the discovery that the advertisement was still active.
4. On October 26, 2018, Officer Kobitz discovered that the advertisement for the Property was still active.
5. On November 8, 2018, Officer Kobitz discovered that the advertisement for the Property was still active despite the Property's not being licensed.
6. On November 29, 2018, Officer Kobitz conducted a follow-up inspection on the Property to confirm that the advertisement was disactivated, and discovered that the advertisement was still active. Thus, Officer Kobitz issued *Administrative Citation Ticket Number No. 004609* for advertising an STR without a valid STR license.

III. Decision

A. Applicable Ordinances (City of Austin Regulations)

§ 25-2-794 - GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS.

- (A) A licensee or guest of a short-term rental may not use or allow the use of sound equipment that produces sound in excess of 75 decibels at the property line between 10:00 a.m. and 10:00 p.m.
- (B) A licensee or guest of a short-term rental may not use or allow use of sound equipment that produces sound audible beyond the property line between 10:00 p.m. and 10:00 a.m.
- (C) A licensee or guest of a short-term rental shall not make or allow another to make noise or play a musical instrument audible to an adjacent business or residence between 10:30 p.m. and 7:00 a.m.
- (D) If a building permit prohibiting occupancy of the structure is active, no person may occupy, for sleeping or living purposes, the structure until final inspections have been passed and the building permit is closed.
- (E) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental without including:
 - (1) the license number assigned by the City to the short-term rental; and
 - (2) the applicable occupancy limit for the short-term rental.
- (F) An owner, or a person in control of a dwelling, may not advertise or promote, or allow another to advertise or promote, the dwelling as a short-term rental if the dwelling is not licensed by the director as a short-term rental.
- (G) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental in violation of the City Code or state law.
- (H) A person must obtain a license to operate a short-term rental before a property may be used as a short-term rental.
- (I) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this subsection, dwelling unit means the area being used as a short-term rental, including a partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

Ordinance 20160223-A.1

§ 25-2-788 - SHORT-TERM RENTAL (TYPE 1) REGULATIONS.

- (A) This section applies to a short-term rental use that:
 - (1) is rented for periods of less than 30 consecutive days; and

- (2) is owner-occupied or is associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
 - (1) include the rental of less than an entire dwelling unit, unless all of the following conditions are met:
 - (a) a partial unit must at a minimum include the exclusive use of a sleeping room and shared use of a full bathroom;
 - (b) the owner is generally present at the licensed short-term rental property for the duration of any short-term rental of a partial unit;
 - (c) not more than one partial unit at the property is simultaneously rented for any period less than 30 consecutive days; and
 - (d) rental of the partial unit is limited to a single party of individuals;
 - (2) operate without a license as required by Section 25-2-791 (*License Requirements*);
 - (3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*); or
 - (4) include a secondary dwelling unit or secondary apartment except as provided by Section 25-2-774(C)(6) (*Two Family Residential Use*) and 25-2-1463(C)(6) (*Secondary Apartment Regulations*).

*Ord. 20120802-122; Ord. 20130926-144;
& Ord. 20151119-080*

PART 2. City Code Section 2-13-23 (*Establishing a Penalty*) is amended to amend Subsections (A) and (B); and to add new Subsections (D) through (I) to read as follows:

§2-13-23 ESTABLISHING A PENALTY.

- (A) Except as provided in Subsections (D) and (G), the penalty range that may be assessed against a violator found liable under this chapter shall be no more than \$1,000 and:
 - (1) not less than \$250.00 for a first violation;
 - (2) not less than \$500.00 for a second violation; and
 - (3) not less than \$750.00 for a third or subsequent violation.
- (B) In addition to the penalty assessed, the hearing officer must require the violator found liable under this chapter to pay costs set by separate ordinance.
- (D) Except as provided in Subsection (G), the penalty range that may be assessed against a violator found liable under this chapter for violating Chapter 25-2 (*Zoning*) of the City Code shall be no more than \$1,000 and:

- (1) not less than \$500.00 for a first violation;
 - (2) not less than \$750.00 for a second violation; and
 - (3) not less than \$1,000.00 for a third or subsequent violation.
- (E) A violator who has been found liable for a violation may assert a financial inability to pay the penalty. If a violator asserts a financial inability to pay the penalty, the hearing officer must make a determination of financial inability to pay. The determination must be made based on documentary evidence provided to the hearing officer.
- (F) A violator claiming a financial inability to pay the penalty must have an income that does not exceed 60 percent of the United States Department of Housing and Urban Development (HUD) median family income (MFI) in the Austin-Round Rock-San Marcos area and must be a resident of the property or premises subject of the administrative citation and the sole owner of the property or premises, except that a violator may be a co-owner of the property or premises if all other co-owners cannot be located or are financially unable to pay the penalty.
- (G) If the hearing officer determines that the violator does not have the financial ability to pay the penalty, the hearing officer must make the finding in writing and must reduce the penalty to an amount that is within the violator's ability to pay.
- (H) A violator cannot appeal the hearing officer's determination related to the violator's financial inability to pay.
- (I) A violator who has been found liable for a violation may request to pay the penalty in equal installments during the six months from the date the hearing officer issues an order. A violator must request to pay the penalty in installments within 20 calendar days from the date the hearing officer issues the order and must waive the appeal described in Section 2-13-31 (*Appeal From a Hearing*). The Code Official is authorized to grant a request to pay the penalty as described in this subsection.

PART 3. The 2016-2017 Fee Schedule, attached as Exhibit "A" to Ordinance No. 20160914-003, is amended to add a fee associated with "Administrative Hearings" to read as follows:

Austin Code Department

| | FY 2017-18 | FY 2018-19 | Note | Change |
|-----------------------|-------------------|-------------------|------------------------------|---------------|
| <u>Administrative</u> | <u>\$80.00</u> | <u>\$128.00</u> | <u>if violator is liable</u> | <u>New</u> |
| <u>Hearing Costs</u> | | | | |
| <u>(Chapter 2-13)</u> | | | | |

Ordinance No. 20170413-002

B. Discussion

It is undisputed that the Property Owner was advertising the Property as a short-term rental without a valid license in violation of City Code §25-2-794. The facts of this case support the validity of *Administrative Citation Ticket Number No. 004609* for advertising the Property as an unlawful short-term rental with a license issued by the City of Austin. Respondent is responsible for knowledge of and compliance with applicable City ordinances and the applicable sections of the City Code which preclude advertising or operating properties as short term rentals without a valid license to do so. Moreover, the Property Owner had reason to know that the STR license was needed because Respondent had already been cited for not having a valid STR license.

I conclude that Property Owner violated City of Austin Code of Ordinances §25-2-794 by advertising the Property at 903 Edgecliff Terrace, Austin, Texas 78704 as a short-term rental without a license issued by the City of Austin. Under §2-13-23(D), cited herein, a minimum penalty of \$750.00 is normally required for this second violation for operating without a license in violation of City Code §25-2-794, in addition to an \$128.00 administrative hearing fee.

Signed this 26th day of February, 2019.


STEPHEN P. WEBB
INDEPENDENT HEARING OFFICER

II. Findings of Fact

Based upon the testimony and written evidence submitted at the hearing, I make the following factual findings:

1. Respondent is the owners of residential property located at 903 Edgecliff Terrace, Austin, Texas 78704 ("the Property"). The Property is legally described as LOT 8 * & W25FT OF LOT 7 BLK 52 TRAVIS HEIGHTS Zoned as SF-3-NP.
2. On October 4, 2018, Officer Chris Kobitz, Code Enforcement Officer ("Officer Kobitz"), discovered an active advertisement for the Property. After confirming that there was no valid STR license, Officer Kobitz sent Respondent a Notice of Code Violation.
3. Officer Kobitz issued *Administrative Citation Ticket Number No. 004601* on October 17, 2018 for advertising an STR without a valid STR license based on the discovery that the advertisement was still active.
4. On October 26, 2018, Officer Kobitz conducted a follow-up visit to the Property at 6:25pm, and encountered a male visitor, who stated that he was visiting with six (6) other visitors who were in town for the film festival. The male visitor confirmed that the Property had been rented through AirBnB and Officer Kobitz explained that the Property was not licensed as an STR, although the visitors would not be required to leave. Officer Kobitz later sent Respondent a Notice of Violation for operation of an STR, and discovered that the advertisement for the Property was still active.
5. On November 8, 2018, Officer Kobitz discovered that the advertisement for the Property was still active and offered the occupancy for sixteen (16) guests, despite the Property's not being licensed. Officer Kobitz conducted a follow-up visit to the Property to post *Administrative Citation Ticket Number No. 004602* and encountered a guest who explained that the Property had been booked through AirBnB for a week.

6. On November 29, 2018, Officer Kobitz conducted a follow-up inspection on the Property to confirm that the advertisement was deactivated, and discovered that not only was the advertisement still active, but it was still advertising occupancy of sixteen (16) people. Thus, Officer Kobitz issued *Administrative Citation Ticket Number No. 004609* on for advertising an STR without a valid STR license and *Administrative Citation Ticket Number No. 004610* for advertising an STR with occupancy over the limit.

III. Decision

A. Applicable Ordinances (City of Austin Regulations)

§ 25-2-794 - GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS.

- (A) A licensee or guest of a short-term rental may not use or allow the use of sound equipment that produces sound in excess of 75 decibels at the property line between 10:00 a.m. and 10:00 p.m.
- (B) A licensee or guest of a short-term rental may not use or allow use of sound equipment that produces sound audible beyond the property line between 10:00 p.m. and 10:00 a.m.
- (C) A licensee or guest of a short-term rental shall not make or allow another to make noise or play a musical instrument audible to an adjacent business or residence between 10:30 p.m. and 7:00 a.m.
- (D) If a building permit prohibiting occupancy of the structure is active, no person may occupy, for sleeping or living purposes, the structure until final inspections have been passed and the building permit is closed.
- (E) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental without including:
 - (1) the license number assigned by the City to the short-term rental; and
 - (2) the applicable occupancy limit for the short-term rental.
- (F) An owner, or a person in control of a dwelling, may not advertise or promote, or allow another to advertise or promote, the dwelling as a short-term rental if the dwelling is not licensed by the director as a short-term rental.
- (G) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental in violation of the City Code or state law.
- (H) A person must obtain a license to operate a short-term rental before a property may be used as a short-term rental.
- (I) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this

subsection, dwelling unit means the area being used as a short-term rental, including a partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

Ordinance 20160223-A.1

§ 25-2-795 - OCCUPANCY LIMITS FOR SHORT-TERM RENTALS.

(A) In this section:

- (1) ADULT means a person 18 years of age or older.
- (2) DOMESTIC PARTNERSHIP means adults living in the same household and sharing common resources of life in a close, personal, and intimate relationship.
- (3) UNRELATED means not connected by consanguinity, marriage, domestic partnership, or adoption.

(B) Unless a stricter limit applies, not more than two adults per bedroom plus two additional adults may be present in a short-term rental between 10:00 p.m. and 7:00 a.m.

(C) A short-term rental is presumed to have two bedrooms, except as otherwise determined through an inspection approved by the director.

(D) A licensee or guest may not use or allow another to use a short-term rental for an assembly between 10:00 p.m. and 7:00 a.m.

(E) A licensee or guest may not use or allow another to use a short-term rental for an outside assembly of more than six adults between 7:00 a.m. and 10:00 p.m.

(F) For purposes of this section, an assembly includes a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping.

(G) A short-term rental use may not be used by more than:

- (1) ten adults at one time, unless a stricter limit applies; or
- (2) six unrelated adults.

(H) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this subsection, dwelling unit means the area being used as a short-term rental, including the partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

Ordinance 20160223-A.1

§ 25-2-788 - SHORT-TERM RENTAL (TYPE 1) REGULATIONS.

(A) This section applies to a short-term rental use that:

- (1) is rented for periods of less than 30 consecutive days; and

- (2) is owner-occupied or is associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
 - (1) include the rental of less than an entire dwelling unit, unless all of the following conditions are met:
 - (a) a partial unit must at a minimum include the exclusive use of a sleeping room and shared use of a full bathroom;
 - (b) the owner is generally present at the licensed short-term rental property for the duration of any short-term rental of a partial unit;
 - (c) not more than one partial unit at the property is simultaneously rented for any period less than 30 consecutive days; and
 - (d) rental of the partial unit is limited to a single party of individuals;
 - (2) operate without a license as required by Section 25-2-791 (*License Requirements*);
 - (3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*); or
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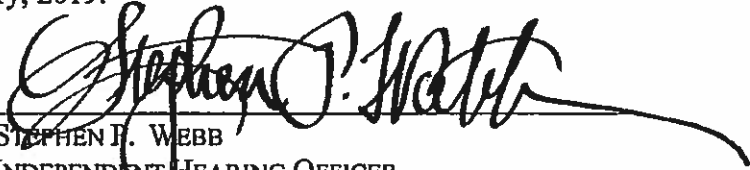
Ordinance No. 20170413-002

B. Discussion

It is undisputed that the Property Owner was advertising the Property as a short-term rental without a valid license over the legally allowed occupancy limits in violation of City Code §25-2-795. The facts of this case support the validity of *Administrative Citation Ticket Number No. 004610* for advertising the Property as an unlawful short-term rental over the occupancy limit issued by the City of Austin. Respondent is responsible for knowledge of and compliance with applicable City ordinances and the applicable sections of the City Code which preclude advertising or operating properties as short term rentals without a valid license to do so. Moreover, the Property Owner had reason to know that the advertised occupancy was over the limit because Respondent was in the process of applying for a license, which does not allow for more than ten (10) people on any STR for the duration of the rental.

I conclude that Property Owner violated City of Austin Code of Ordinances §25-2-795 by advertising the Property at 903 Edgecliff Terrace, Austin, Texas 78704 as a short-term rental over the occupancy limit issued by the City of Austin. Under §2-13-23(D), cited herein, a minimum penalty of \$750.00 is normally required for this second violation for operating without a license in violation of City Code §25-2-794, in addition to an \$128.00 administrative hearing fee.

Signed this 26th day of February, 2019.


STEPHEN P. WEBB
INDEPENDENT HEARING OFFICER